

DONALD VERNAY (Texas State Bar No. 24035581)  
1604 Golf Course Road SE  
Rio Rancho, New Mexico 87124  
(Email: Minimal1243@yahoo.com)  
Telephone: (505) 892-2766  
Facsimile: (505) 892-8119

SEAN K. KENNEDY (California Bar No. 145632)  
Federal Public Defender  
MARGO A. ROCCONI (California Bar No. 156805)  
(E-mail: Margo Rocconi@fd.org)  
BRAD D. LEVENSON (California Bar No. 166073)  
(E-mail: Brad Levenson@fd.org)  
Deputy Federal Public Defenders  
321 East 2nd Street  
Los Angeles, California 90012-4202  
Telephone: (213) 894-7521/2026  
Facsimile: (213) 894-0081

Attorneys for Petitioner  
CLINTON LEE YOUNG

**FILED**

OCT 20 2008

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY SV  
DEPUTY CLERK

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
MIDLAND DIVISION

CLINTON LEE YOUNG,

Petitioner,

v.

NATHANIEL QUARTERMAN,  
Director, Texas Department of Criminal  
Justice, Correctional Institutions  
Division,

Respondent.

NO. 7:07-CV-00002-RAJ

**DEATH PENALTY CASE**

**FIRST AMENDED PETITION  
FOR WRIT OF HABEAS  
CORPUS BY A PERSON IN  
STATE CUSTODY;  
MEMORANDUM OF POINTS  
AND AUTHORITIES; EXHIBITS**

[28 U.S.C. § 2254]

## TABLE OF CONTENTS

	Page
I. STATEMENT OF FACTS .....	2
A. Introduction .....	2
B. The Life History of Clinton Lee Young .....	6
1. Introduction .....	6
2. The Family Mr. Young Was Born Into .....	7
3. Mr. Young's Pre-disposition for Addiction and Mental Illness .....	8
4. Mr. Young's Early Years .....	8
5. Family Life and School .....	9
6. Early Treatment .....	11
7. Mr. Young Enters a World of Institutions .....	14
8. Years at TYC .....	16
9. Mr. Young's Return to the Outside World .....	18
C. Mr. Young's Trial .....	21
1. Guilt/Innocence Phase -- Prosecution Case .....	21
2. Guilt/Innocence Phase -- Defense Case .....	22
3. Punishment Phase -- Prosecution Case .....	23
4. Punishment Phase -- Defense Case .....	23

## TABLE OF CONTENTS (CONT'D)

	Page
II. PROCEDURAL HISTORY .....	24
A. Trial Court Proceedings .....	24
1. Appointment of Counsel .....	24
2. Indictment and Re-Indictment .....	24
3. Trial .....	25
4. Motion for New Trial .....	26
B. State Appellate Proceedings .....	26
C. State Habeas Proceedings .....	28
D. Federal Court Proceedings .....	29
III. AEDPA STANDARDS .....	30
IV. NEWLY DISCOVERED EVIDENCE CLAIMS	
CLAIM ONE	
THE PROSECUTION'S FAILURE TO PRODUCE EXCULPATORY EVIDENCE, AND THE PRESENTATION OF FALSE TESTIMONY, VIOLATED MR. YOUNG'S CONSTITUTIONAL RIGHTS .....	32
A. Introduction .....	33
B. Relevant Facts .....	33
1. Ray's Plea Deal .....	34
2. Page's Plea Deal .....	38

## TABLE OF CONTENTS (CONT'D)

	Page
C. Relevant Legal Authority .....	39
1. <i>Brady v. Maryland</i> .....	39
2. <i>Napue v. Illinois</i> .....	40
D. Because The Prosecutor Failed to Disclose Material Exculpatory Evidence and Presented False Testimony Regarding Page's and Ray's Plea Deal with the State, Mr. Young's Petition Should be Granted .....	42
E. The State Deprived Mr. Young of His Right to Confront the Witnesses Against Him When it Instructed Mark Ray Not to Reveal the Plea Agreement When He Testified at Young's Trial ..	48
F. Conclusion .....	49

### CLAIM TWO

THE PROSECUTION'S SUPPRESSION OF EVIDENCE CONCERNING STATE WITNESS A. P. MERILLAT VIOLATED MR. YOUNG'S CONSTITUTIONAL RIGHTS .....	50
A. Merillat's Testimony at Mr. Young's Trial .....	50
B. Suppressed Evidence .....	56
C. Relevant Law .....	57
D. The Prosecution Suppressed Evidence Concerning A. P. Merillat .....	57
E. Evidence That Could Be Used to Impeach Merillat Was Favorable to Mr. Young .....	60

## TABLE OF CONTENTS (CONT'D)

	Page
F. The Suppressed and Favorable Evidence Was Material for Mr. Young's Sentence to the Death Penalty .....	61
G. The State Deprived Mr. Young of His Right to Confront Merillat.	65
H. Conclusion .....	66
 CLAIM THREE	
THE JUDGE WHO PRESIDED OVER MR. YOUNG'S TRIAL WAS NOT IMPARTIAL .....	66
A. Underlying Facts Related to this Claim .....	67
B. Relevant Law .....	68
C. Judge Hyde Was Actually Biased Against Mr. Young and Mr. Young's Conviction must Be Reversed .....	69
D. Because of Judge Hyde's Bias Against Mr. Young, Any Claim Ruled upon by Judge Hyde During the State Post-Conviction Proceeding Should Be Reviewed De Novo by this Court .....	71
 CLAIM FOUR	
MR. YOUNG'S CAPITAL SENTENCING JURY WAS DENIED A VEHICLE FOR EXPRESSING ITS REASONED MORAL RESPONSE TO YOUNG'S MITIGATING EVIDENCE, IN VIOLATION OF THE SUPREME COURT <i>PENRY</i> LINE OF CASES .....	72
A. Introduction .....	73
B. State's Evidence in Aggravation .....	73
1. The State's Evidence of "Pattern of Criminal Conduct" Through State Agencies .....	74

## TABLE OF CONTENTS (CONT'D)

	<b>Page</b>
2. State's Evidence of "Pattern of Criminal Conduct" Through School Records .....	76
3. State's Evidence of "Pattern of Criminal Conduct" Through Testimony of Doctors .....	77
C. Mr. Young's Evidence in Mitigation .....	80
D. State's Rebuttal .....	103
E. Jury Instructions .....	104
ISSUE NO 1. ....	105
ISSUE NO. 2 .....	105
ISSUE NO. 3 .....	106
F. Relevant Legal Authority .....	106
G. The CCA Adjudication of Mr. Young's Claim on the Merits Resulted in a Decision That Was Contrary To, or Involved an Unreasonable Application Of, Clearly Established Federal Law, as Determined by the Supreme Court of the United States ..	110
H. Mr. Young's Capital Sentencing Jury Was Denied a Vehicle to Express its Reasoned Moral Response to Mr. Young's Mitigating Evidence .....	112
I. The Trial Court Improperly Limited the Type of Evidence the Jury Could Consider as Mitigating .....	113
J. Improper Nexus Required .....	122

**TABLE OF CONTENTS (CONT'D)**

	<b>Page</b>
K. Confining Mr. Young's Mitigation to its Harmful Effect .....	124
L. Conclusion .....	127

**CLAIM FIVE**

MR. YOUNG WAS DENIED THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AT THE GUILT AND PUNISHMENT PHASES OF HIS CAPITAL TRIAL .....	128
---	-----

A. Legal Standard .....	130
-------------------------	-----

B. Counsel's Failure to Object to the TYC Records .....	132
---	-----

1. Pre-trial Investigation and Indictment .....	133
---	-----

2. State Hearing .....	138
------------------------	-----

3. Relevant Legal Authority .....	138
-----------------------------------	-----

a. Fourth Amendment Right to Privacy .....	138
--	-----

4. Mr. Young had a Legitimate Subjective Expectation of Privacy in his TYC Records .....	140
---	-----

5. Society Has an Objective Expectation of Privacy in Relation to Medical Records in General, Including Those Concerning a Juvenile .....	141
---	-----

6. Mr. Young's Expectation of Privacy Before He Was Charged with the Underlying Convictions .....	145
--	-----

7. Exclusion of Evidence .....	148
--------------------------------	-----

8. The Decision Was Not Strategic .....	149
---	-----

## TABLE OF CONTENTS (CONT'D)

	Page
9. Prejudice from Failing to Investigate and Challenge the State's Seizure of Mr. Young's TYC Records .....	149
10. Trial Counsel Also Failed to Object to the TYC Records on Hearsay Grounds .....	150
C. Counsel's Failure to Present the Testimony of Mr. Young's Former Teachers .....	154
1. Fant and Hall .....	155
2. State Hearing .....	155
3. Counsel Had No Informed, Legitimate Reason Not Calling Fant or Hall as Witnesses at the Punishment Phase .....	157
D. Counsel's Failure to Utilize Available Ballistics Evidence That Would Have Shown that Someone Other than Mr. Young Shot Doyle Douglas .....	159
1. Relevant Trial Testimony .....	160
2. Relevant State Writ Testimony .....	162
3. Trial Counsel Should Have Argued and Presented Ballistics Evidence at Trial .....	163
4. Conclusion .....	165
E. Conclusion .....	166



## TABLE OF CONTENTS (CONT'D)

	Page
<b>CLAIM SIX</b>	
MR. YOUNG’S CONSTITUTIONAL RIGHTS WERE VIOLATED BECAUSE THE EVIDENCE WAS INSUFFICIENT TO FIND THAT THE KILLINGS OCCURRED IN THE SAME CRIMINAL TRANSACTION OR IN DIFFERENT CRIMINAL TRANSACTIONS COMMITTED PURSUANT TO THE SAME SCHEME OR COURSE OF CONDUCT .....	167
A.    Legal Standard .....	168
B.    Relevant Facts .....	168
C.    Argument .....	170
<b>CLAIM SEVEN</b>	
MR. YOUNG’S CONSTITUTIONAL RIGHTS WERE VIOLATED BECAUSE THE EVIDENCE WAS INSUFFICIENT TO FIND THAT THE PETREY MURDER OCCURRED IN COMMISSION OF ROBBERY OR KIDNAPPING .....	175
A.    Legal Standard .....	176
B.    28 U.S.C. Section 2254(d) Does Not Apply .....	176
C.    Argument .....	177
<b>CLAIM EIGHT</b>	
THE COURT VIOLATED MR. YOUNG’S CONSTITUTIONAL RIGHTS BY DISALLOWING IMPEACHMENT EVIDENCE OF DAVID PAGE .....	180
<b>CLAIM NINE</b>	
MR. YOUNG WAS DENIED A TRIAL BY AN IMPARTIAL JURY WHEN VENIRE PERSON DANIE LYNN ROBERTS WAS EXCLUDED SIMPLY BECAUSE SHE EXPRESSED RESERVATIONS ABOUT THE DEATH PENALTY .....	183

**TABLE OF CONTENTS (CONT'D)**

	<b>Page</b>
A. Relevant Facts .....	184
B. Argument .....	185
 <b>CLAIM TEN</b>	
THE CAPITAL OFFENSE OF MURDER IN THE COURSE OF KIDNAPPING, AS SET FORTH IN THE TEXAS PENAL CODE, IS UNCONSTITUTIONAL .....	188
 <b>CLAIM ELEVEN</b>	
MR. YOUNG'S DUE PROCESS RIGHTS WERE VIOLATED BECAUSE OF THE PROSECUTOR'S UNFETTERED DISCRETION IN CHARGING HIS CASE CAPITALLY .....	192
A. Factual Basis .....	193
B. Argument .....	194
C. Conclusion .....	196
 <b>CLAIM TWELVE</b>	
MR. YOUNG'S RIGHT TO BE FREE FROM CRUEL AND UNUSUAL PUNISHMENT WAS VIOLATED BECAUSE OF THE PROSECUTOR'S UNFETTERED DISCRETION IN CHARGING HIS CASE CAPITALLY .....	197
A. Factual Basis .....	197
B. Argument .....	197
C. Conclusion .....	198

## TABLE OF CONTENTS (CONT'D)

	Page
CLAIM THIRTEEN	
THE EVIDENCE WAS INSUFFICIENT AT THE PUNISHMENT PHASE TO WARRANT AN AFFIRMATIVE FINDING BY THE JURY AS TO SPECIAL ISSUE NO. 2 .....	199
CLAIM FOURTEEN	
THE COURT'S SUPPLEMENTAL INSTRUCTION ON SPECIAL ISSUE NO. 2 VIOLATED MR. YOUNG'S CONSTITUTIONAL RIGHTS .....	202
A. Facts Supporting the Claim .....	203
B. Legal Argument .....	204
1. The Supplemental Instruction Relieved the State of its Burden to Prove Intent to Kill .....	204
2. The Supplemental Instruction Violated Mr. Young's Rights Under <i>Apprendi</i> to Have All Sentencing Facts Found By a Jury Beyond a Reasonable Doubt .....	206
3. The Supplemental Instruction, Because it Directed a Finding of Intent to Kill, Did Not Allow the Jury to Give Effect to Mitigating Evidence .....	207
CLAIM FIFTEEN	
SHERIFF PAINTER'S LUNCH WITH THE JURY DENIED MR. YOUNG A FAIR AND IMPARTIAL PUNISHMENT PHASE JURY TRIAL .....	209
A. Factual Background .....	210
B. Legal Analysis .....	212
C. Conclusion .....	216

## TABLE OF CONTENTS (CONT'D)

### Page

#### CLAIM SIXTEEN

TO EXECUTE MR. YOUNG, BASED ON HIS MENTAL ILLNESS  
OF ADHD, WOULD VIOLATE THE EIGHTH AND FOURTEENTH  
AMENDMENTS OF THE FEDERAL CONSTITUTION ..... 217

A. Relevant Facts ..... 218

B. Legal Standard ..... 218

C. Mr. Young's Mental Age and Immaturity, Brought about by  
His ADHD, Make Him Ineligible for the Death Penalty ..... 219

#### CLAIM SEVENTEEN

MR. YOUNG'S CONSTITUTIONAL RIGHTS WERE VIOLATED  
WHEN THE TRIAL COURT FAILED TO INSTRUCT THE JURY  
REGARDING THE BURDEN OF PROOF ON THE MITIGATION  
ISSUE; THE PUNISHMENT CHARGE ALSO FAILED TO GIVE  
PROPER GUIDANCE TO THE JURY REGARDING THE  
HEIGHTENED STANDARD REQUIRED FOR A DEATH  
PENALTY CASE ..... 223

#### CLAIM EIGHTEEN

THE REFUSAL BY THE CCA TO REVIEW THE SUFFICIENCY  
OF THE MITIGATING EVIDENCE VIOLATES MR. YOUNG'S  
CONSTITUTIONAL RIGHTS ..... 232

A. Relevant Facts ..... 233

B. Argument ..... 234

## TABLE OF CONTENTS (CONT'D)

	Page
<b>CLAIM NINETEEN</b>	
THE EVIDENCE WAS INSUFFICIENT TO FIND, BEYOND A REASONABLE DOUBT, THAT THERE WAS A PROBABILITY THAT MR. YOUNG WOULD COMMIT CRIMINAL ACTS OF VIOLENCE THAT WOULD CONSTITUTE A CONTINUED THREAT TO SOCIETY .....	240
A. Legal Standard .....	241
B. Relevant Facts .....	241
C. Argument .....	243
<b>CLAIM TWENTY</b>	
A SENTENCE OF DEATH CANNOT BE IMPOSED IF ALL OF THE FACTORS THAT WOULD PREVENT SUCH A SENTENCE ARE NOT ALLEGED IN THE INDICTMENT .....	245
A. Relevant Facts .....	246
B. Argument .....	247
<b>CLAIM TWENTY-ONE</b>	
MR. YOUNG'S CONSTITUTIONAL RIGHTS WERE VIOLATED BY THE "12/10" PUNISHMENT CHARGE .....	252
<b>CLAIM TWENTY-TWO</b>	
MR. YOUNG'S CONSTITUTIONAL RIGHTS WERE VIOLATED WHEN THE COURT REFUSED TO ALLOW THE SENTENCING JURY TO FULLY CONSIDER AND GIVE EFFECT TO MR. YOUNG'S MITIGATING EVIDENCE .....	259

## TABLE OF CONTENTS (CONT'D)

	Page
VI. CLAIMS FOUND PROCEDURALLY BARRED BY THE CCA . . . . .	261
CLAIM TWENTY-THREE	
MR. YOUNG'S STATE HABEAS CLAIMS 15 THROUGH 22, AND NUMEROUS PRO SE CLAIMS, WHICH WERE DEEMED PROCEDURALLY BARRED BY THE STATE COURT, ARE PROPERLY BEFORE THIS COURT BECAUSE THE STATE BAR WAS NOT INDEPENDENT OF FEDERAL LAW . . . . .	262
A. Relevant Law . . . . .	262
B. Relevant Facts . . . . .	265
C. The CCA's Dismissal of Mr. Young's Claims Is Not Independent and Does Not Preclude this Court from Reaching His Claims . . . . .	266
ORI WHITE'S SUPPLEMENTAL APPLICATION CLAIMS . . . . .	269
MR. YOUNG'S PRO-SE CLAIMS . . . . .	276
D. Conclusion . . . . .	298
CLAIM TWENTY-FOUR	
BECAUSE MR. YOUNG CAN SHOW CAUSE AND PREJUDICE, THE CLAIMS WHICH WERE DEEMED PROCEDURALLY BARRED BY THE CCA SHOULD BE HEARD BY THIS COURT . . .	299
A. Relevant Legal Authority: Cause and Prejudice . . . . .	299
B. Incompetence of State Habeas Counsel . . . . .	301

## TABLE OF CONTENTS (CONT'D)

	Page
1. The CCA's Failure to Appoint Competent Counsel and to Monitor Counsel Once Appointed Constitute an External, Objective Factor, Which Cannot Fairly Be Attributed to Mr. Young, Thus Excusing Mr. Young's Inability from Previously Presenting His Numerous Valid Claims . . . . .	301
2. Statutory Right to Representation by Competent Counsel . . . . .	303
3. Relevant Facts . . . . .	309
a. Life Before Milstein Became a P.I. . . . .	310
b. The Practice Group . . . . .	310
c. Milstein's Early Career (1995-1997) . . . . .	311
d. Michael Rodriguez Case (2001) . . . . .	312
e. David Lynn Carpenter Case (2001-2006) . . . . .	313
f. Milstein's Polunsky Incident (2003) . . . . .	315
g. Taylor Appointed as Mr. Young's State Habeas Counsel (April 2003) . . . . .	316
h. Walter Sorto Case (2003) . . . . .	316
i. Vaughn Ross Case (2003-2004) . . . . .	318
j. Alfred Bourgeois Case (Fall 2004 - Winter 2005) . . . . .	324
k. The Practice Group Talks About Milstein's Problems . . . . .	325
l. Taylor Puts the Court on Further Notice Regarding Milstein's Problems . . . . .	326

## TABLE OF CONTENTS (CONT'D)

	Page
m. Milstein Loses Her Office Space (2005) .....	326
n. Rafael Holiday Case (April 2005) .....	327
o. Mr. Young's Case .....	328
p. The Practice Group Breaks Apart .....	329
q. Milstein Enters Drug Rehab .....	329
r. Mr. Young's Hearing .....	330
4. By Appointing Incompetent Counsel and Not Adopting Proper Standards to Evaluate Counsel's Competency, the CCA Denied Mr. Young of His Opportunity to Properly Challenge His Conviction and Sentence of Death at the State Level, in Violation of Mr. Young's Procedural Due Process Rights under the Fourteenth Amendment .....	336
C. Judicial Bias .....	341
1. Introduction .....	341
2. Relevant Law .....	342
3. Judge Hyde's Bias Excuses Mr. Young's Procedural Default .....	342
D. Conclusion .....	343
VII. PREVIOUSLY UNEXHAUSTED CLAIMS .....	344



## TABLE OF CONTENTS (CONT'D)

	Page
<b>CLAIM TWENTY-FIVE</b>	
DUE TO THE INCOMPETENCE OF STATE HABEAS COUNSEL, THE FOLLOWING CLAIMS SHOULD HAVE BEEN RAISED IN MR. YOUNG'S INITIAL STATE WRIT PROCEEDING .....	344
A. The State Interfered with the Defense's Investigation and Presentation of its Mitigation Case .....	344
1. Relevant Law .....	344
2. The Prosecutor Interfered with the Investigation and Presentation of Mitigating Evidence .....	345
a. Relevant Facts .....	346
b. Argument .....	350
B. Counsel's Failure to Present Key Evidence in Mitigation .....	360
1. Relevant Law .....	361
2. Facts and Analysis .....	361
C. The State Lost or Destroyed Key Evidence .....	365
1. Factual Background .....	366
2. Analysis .....	366
D. Mr. Young Received Ineffective Assistance of Appellate Counsel .....	369
E. The Cumulative Effect Renders All Phases of Mr. Young's Trial Fundamentally Unfair .....	370

**TABLE OF CONTENTS (CONT'D)**

	<b>Page</b>
F. Mr. Young is Innocent of Capital Murder .....	372
G. Conclusion .....	373
VIII. PRAYER FOR RELIEF .....	375
IX. VERIFICATION OF PETITION .....	377
X. VERIFICATION REGARDING AUTHENTICITY OF EXHIBITS ...	378

## TABLE OF AUTHORITIES

FEDERAL CASES	PAGE(S)
<i>Abdul-Kabir v. Quarterman</i> , 550 U.S. 233, 127 S. Ct. 1654, 167 L. Ed. 2d 585 (2007) .....	<i>passim</i>
<i>Addington v. Texas</i> , 441 U.S. 418, 99 S. Ct. 1804, 60 L. Ed. 2d 323 (1979) .....	227, 228
<i>Aetna Life Insurance Co. v. Lavoie</i> , 475 U.S. 813, 106 S. Ct. 1580, 89 L. Ed. 2d 823 (1986) .....	68
<i>Ake v. Oklahoma</i> , 470 U.S. 68, 105 S. Ct. 1087, 84 L. Ed. 2d 53 (1985) .....	263
<i>Alcorta v. Texas</i> , 355 U.S. 28, 78 S. Ct. 103, 2 L. Ed. 2d 9 (1957) .....	40, 41
<i>Alexander v. Primerica Holdings</i> , 10 F.3d 155 (3d Cir. 1993) .....	72
<i>Allen v. United States</i> , 536 U.S. 953, 122 S. Ct. 2653, 153 L. Ed. 2d 830 (2002) .....	249, 250
<i>Amadeo v. Zant</i> , 486 U.S. 214, 108 S. Ct. 1771, 100 L. Ed. 2d 249 (1988) .....	300
<i>Amdor v. Quarterman</i> , 458 F.3d 397 (5th Cir. 2006) .....	369
<i>Apprendi v. New Jersey</i> , 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000) .	27, 206, 207, 248
<i>Arave v. Creech</i> , 507 U.S. 463, 113 S. Ct. 1534, 123 L. Ed. 2d 188 (1993) .....	<i>passim</i>
<i>Arizona v. Youngblood</i> , 488 U.S. 51, 109 S. Ct. 333, 102 L. Ed. 2d 281 (1988) .....	369
<i>Atkins v. Virginia</i> , 536 U.S. 304, 122 S. Ct. 2242, 153 L. Ed. 2d 335 (2002) .....	218
<i>Ball v. United States</i> , 140 U.S. 118, 11 S. Ct. 761, 35 L. Ed. 377 (1891) .....	250
<i>Banks v. Dretke</i> , 540 U.S. 668, 124 S. Ct. 1256, 157 L. Ed. 2d 1166 (2004) .....	39
<i>Barrientes v. Johnson</i> , 221 F.3d 741 (5th Cir. 2000) .....	345

## TABLE OF AUTHORITIES

FEDERAL CASES (CONT'D)	PAGE(S)
<i>Bell v. Cone</i> , 535 U.S. 685, 122 S. Ct. 1843, 152 L. Ed. 2d 914 (2002) .....	30
<i>Bell v. Ohio</i> , 438 U.S. 637, 98 S. Ct. 2977, 57 L. Ed. 2d 1010 (1978) .....	124
<i>Berger v. United States</i> , 295 U.S. 78, 55 S. Ct. 629, 79 L. Ed. 2d 1314 (1935) .....	41, 64, 345
<i>Bigby v. Dretke</i> , 402 F.3d 551 (5th Cir. 2005) .....	68, 342
<i>Blackledge v. Allison</i> , 431 U.S. 63, 97 S. Ct. 1621, 52 L. Ed. 2d 136 (1977) .....	195
<i>Blanton v. Quarterman</i> , 489 F. Supp. 2d 621 (W. D. Tex. 2007) .....	301, 302
<i>Bollenbach v. United States</i> , 326 U.S. 607, 66 S. Ct. 402, 90 L. Ed. 350 (1946) .....	206
<i>Boyde v. California</i> , 494 U.S. 370, 110 S. Ct. 1190, 108 L. Ed. 2d 316 (1990) .....	109
<i>Bracy v. Gramley</i> , 520 U.S. 899, 117 S. Ct. 1793, 138 L. Ed. 2d 97 (1997) .....	68, 70, 342
<i>Brady v. Maryland</i> , 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963) .....	passim
<i>Brown v. Allen</i> , 344 U.S. 443, 73 S. Ct. 397, 97 L. Ed. 469 (1953) .....	300
<i>Brown v. Payton</i> , 544 U.S. 133, 125 S. Ct. 1432, 161 L. Ed. 2d 334 (2005) .....	240
<i>Buckner v. Polk</i> , 453 F.3d 195 (4th Cir. 2006) .....	359
<i>Buntion v. Quarterman</i> , 524 F.3d 664 (5th Cir. 2008) .....	31, 68, 69, 342
<i>Burbank v. Cain</i> , 535 F.3d 350 (5th Cir. 2008) .....	46, 65, 273, 274
<i>Bush v. Gore</i> , 531 U.S. 98, 121 S. Ct. 525, 148 L. Ed. 2d 388 (2000) .....	195

## TABLE OF AUTHORITIES

FEDERAL CASES (CONT'D)	PAGE(S)
<i>Cafeteria and Restaurant Workers Union, Local 473, AFL-CIO v. McElroy</i> , 367 U.S. 886, 81 S. Ct. 1743, 6 L. Ed. 2d 1230 (1961) .....	227
<i>Caldwell v. Mississippi</i> , 472 U.S. 320, 105 S. Ct. 2633, 86 L. Ed. 2d 231 (1985) .....	264
<i>California v. Brown</i> , 479 U.S. 538, 107 S. Ct. 837, 93 L. Ed. 2d 934 (1987) .....	113
<i>California v. Trombetta</i> , 467 U.S. 479, 104 S. Ct. 2528, 81 L. Ed. 2d 413 (1984) .....	366, 367, 368
<i>Carey v. Musladin</i> , 549 U.S. 70, 127 S. Ct. 649, 166 L. Ed. 2d 482 (2006) .....	31
<i>Chambers v. Mississippi</i> , 410 U.S. 284, 93 S. Ct. 1038, 35 L. Ed. 2d 297 (1973) .....	273, 370, 371
<i>Clemons v. Mississippi</i> , 494 U.S. 738, 110 S. Ct. 1441, 108 L. Ed. 2d 725 (1990) .....	235, 236, 237
<i>Clinton Lee Young v. Texas</i> , 547 U.S. 1056, 126 S. Ct. 1652, 164 L. Ed. 2d 398 (2006) .....	28
<i>Coble v. Quarterman</i> , 496 F.3d 430 (5th Cir. 2007) .....	371
<i>Coker v. Georgia</i> , 433 U.S. 584, 97 S. Ct. 2861, 53 L. Ed. 2d 982 (1977) .....	234
<i>Cole v. Arkansas</i> , 333 U.S. 196, 68 S. Ct. 514, 92 L. Ed. 2d 644 (1948) .....	250
<i>Coleman v. Thompson</i> , 501 U.S. 722, 111 S. Ct. 2546, 115 L. Ed. 2d 640 (1991) .....	passim
<i>Cone v. Bell</i> , 128 S. Ct. 2961 (Cert. granted June 23, 2008) .....	203, 298
<i>Crawford v. Washington</i> , 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004) .....	273
<i>Crivens v. Roth</i> , 172 F.3d 991 (9th Cir. 1999) .....	58, 59
<i>Darden v. Wainwright</i> , 477 U.S. 168, 106 S. Ct. 2464, 91 L. Ed. 2d 144 (1986) .....	345, 358

## TABLE OF AUTHORITIES

FEDERAL CASES (CONT'D)	PAGE(S)
<i>Davis v. Alaska</i> , 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974) .....	44, 66
<i>Davis v. Georgia</i> , 429 U.S. 122, 97 S. Ct. 399, 50 L. Ed. 2d 339 (1976) .....	186
<i>Delaware v. Prouse</i> , 440 U.S. 648, 99 S. Ct. 1391, 59 L. Ed. 2d 660 (1979) .....	263, 264
<i>Derden v. McNeel</i> , 978 F.2d 1453 (5th Cir. 1992) .....	372
<i>Dickson v. Quarterman</i> , 462 F.3d 470 (5th Cir. 2005) .....	39, 40
<i>Donnelly v. DeChristoforo</i> , 416 U.S. 637, 94 S. Ct. 1868, 40 L. Ed. 2d 431 (1974) .....	345
<i>Draughon v. Dretke</i> , 427 F.3d 286 (5th Cir. 2005) .....	164, 294, 295
<i>Eddings v. Oklahoma</i> , 455 U.S. 104, 102 S. Ct. 869, 71 L. Ed. 2d 1 (1982) .....	passim
<i>Edwards v. Balisok</i> , 520 U.S. 641, 117 S. Ct. 1584, 137 L. Ed. 2d 906 (1997) .....	4, 69, 342
<i>Edwards v. Carpenter</i> , 529 U.S. 446, 120 S. Ct. 1587, 146 L. Ed. 2d 518 (2000) .....	300
<i>Enmund v. Florida</i> , 458 U.S. 782, 102 S. Ct. 3368, 73 L. Ed. 2d 1140 (1982) .....	119, 205
<i>Estes v. Texas</i> , 381 U.S. 532, 85 S. Ct. 1628, 14 L. Ed. 2d 543 (1965) .....	283
<i>Evitts v. Lucey</i> , 469 U.S. 387, 105 S. Ct. 830, 83 L. Ed. 2d 821 (1985) .....	370
<i>Faulder v. Johnson</i> , 81 F.3d 515 (5th Cir. 1996) .....	41, 286
<i>Florida v. Nixon</i> , 543 U.S. 175, 125 S. Ct. 551, 160 L. Ed. 2d 565 (2004) .....	130
<i>Foster v. Johnson</i> , 293 F.3d 766 (5th Cir. 2002) .....	359

## TABLE OF AUTHORITIES

FEDERAL CASES (CONT'D)	PAGE(S)
<i>Francis v. Franklin</i> , 471 U.S. 307, 105 S. Ct. 1965, 85 L. Ed. 2d 344 (1985) .....	125, 205, 206
<i>Frank v. Mangum</i> , 237 U.S. 309, 35 S. Ct. 582, 59 L. Ed. 2d 969 (1915) .....	215
<i>Franklin v. Lynaugh</i> , 487 U.S. 164, 108 S. Ct. 2320, 101 L. Ed. 2d 155 (1988) .....	125, 256
<i>Franklin v. McCaughtry</i> , 398 F.3d 955 (7th Cir. 2005) .....	70
<i>Fratta v. Quarterman</i> , 536 F.3d 485 (5th Cir. 2008) .....	30, 31, 273
<i>Furman, Furman v. Georgia</i> , 408 U.S. 238, 92 S. Ct. 2726, 33 L. Ed. 2d 346 (1974) .....	passim
<i>Gardner v. Johnson</i> , 247 F.3d 551 (5th Cir. 2001) .....	31
<i>Giglio v. United States</i> , 405 U.S. 150, 92 S. Ct. 763, 31 L. Ed. 2d 104 (1972) .....	41, 46
<i>Glasser v. United States</i> , 315 U.S. 60, 62 S. Ct. 457, 86 L. Ed. 680 (1942) .....	371
<i>Godfrey v. Georgia</i> , 446 U.S. 420, 100 S. Ct. 1759, 64 L. Ed. 2d 398 (1980) .....	190, 230
<i>Gomez v. United States</i> , 490 U.S. 858, 109 S. Ct. 2237, 104 L. Ed. 2d 923 (1989) .....	68, 342
<i>Goodwin v. Johnson</i> , 132 F.3d 162 (5th Cir. 1997) .....	41
<i>Gray v. Mississippi</i> , 481 U.S. 648, 107 S. Ct. 2045, 95 L. Ed. 2d 622 (1987) .....	68, 71, 186, 342
<i>Greer v. Miller</i> , 483 U.S. 756, 107 S. Ct. 3102, 97 L. Ed. 2d 618 (1987) .....	345
<i>Gregg v. Georgia</i> , 428 U.S. 153, 96 S. Ct. 2909, 49 L. Ed. 2d 859 (1976) ....	229, 230, 235, 244
<i>Harris v. Reed</i> , 489 U.S. 255, 109 S. Ct. 1038, 103 L. Ed. 2d 308 (1989) .....	264, 299

## TABLE OF AUTHORITIES

FEDERAL CASES (CONT'D)	PAGE(S)
<i>Henderson v. Quaterman</i> , 460 F.3d 654 (5th Cir. 2005) .....	31
<i>Herrera v. Collins</i> , 506 U.S. 390, 113 S. Ct. 853, 122 L. Ed. 2d 203 (1993) .....	373
<i>Hitchcock v. Dugger</i> , 481 U.S. 393, 107 S. Ct. 1821, 95 L. Ed. 2d 347 (1987) .....	124
<i>Holbrook v. Flynn</i> , 475 U.S. 560, 106 S. Ct. 1340, 89 L. Ed. 2d 525 (1986) .....	215
<i>Holloway v. Arkansas</i> , 435 U.S. 475, 98 S. Ct. 1173, 55 L. Ed. 2d 426 (1978) .....	174, 180, 202
<i>Hudson v. Palmer</i> , 468 U.S. 517, 104 S. Ct. 3194, 82 L. Ed. 2d 393 (1984) .....	142, 143
<i>Irvin v. Dodd</i> , 366 U.S. 717, 81 S. Ct. 1639, 6 L. Ed. 2d 751 (1961) .....	215
<i>Jackson v. Virginia</i> , 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979) .....	passim
<i>Jells v. Mitchell</i> , 538 F.3d 478 (6th Cir. 2008) .....	360
<i>Johnson v. Bagley</i> , ___ F.3d ___, 2008 WL 4527345 (6th Cir. Oct. 10, 2008) .....	61, 360
<i>Johnson v. Dretke</i> , 394 F.3d 332 (5th Cir. 2004) .....	130
<i>Johnson v. Mississippi</i> , 486 U.S. 578, 108 S. Ct. 1981, 100 L. Ed. 2d 575 (1988) .....	372
<i>Johnson v. Texas</i> , 509 U.S. 350, 113 S. Ct. 2658, 125 L. Ed. 2d 290 (1993) .....	107, 109
<i>Jones v. United States</i> , 526 U.S. 227, 119 S. Ct. 1215, 143 L. Ed. 2d 311 (1999) .....	247, 248
<i>Jurek v. Texas</i> , 428 U.S. 262, 96 S. Ct. 2950, 49 L. Ed. 2d 929 (1976) .....	passim
<i>Katz v. United States</i> , 389 U.S. 347, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967) .....	139



## TABLE OF AUTHORITIES

FEDERAL CASES (CONT'D)	PAGE(S)
<i>Kennedy v. Louisiana</i> , 128 S. Ct. 2641, 171 L. Ed. 2d 525 (2008) .....	218
<i>Kimmelman v. Morrison</i> , 477 U.S. 365, 106 S. Ct. 2574, 91 L. Ed. 2d 305 (1986) ..	132, 133, 134, 135
<i>Kirkpatrick v. Whitley</i> , 992 F.2d 491 (5th Cir. 1993) .....	65
<i>Kittelson v. Dretke</i> , 426 F.3d 306 (5th Cir. 2005) .....	49, 273
<i>Knighton v. Maggio</i> , 740 F.2d 1344 (5th Cir. 1984) .....	149
<i>Kopycinski v. Scott</i> , 64 F.3d 223 (5th Cir. 1995) .....	57, 60, 61
<i>Kyles v. Whitley</i> , 514 U.S. 419, 115 S. Ct. 1555, 131 L. Ed. 2d 490 (1995) .....	passim
<i>Lawrence v. Lensing</i> , 42 F.3d 255 (5th Cir. 1994) .....	57
<i>Lawson v. Borg</i> , 60 F.3d 608 (9th Cir. 1995) .....	215
<i>Lewis v. Dretke</i> , 355 F.3d 364 (5th Cir. 2003) .....	132, 361
<i>Lewis v. Jeffers</i> , 497 U.S. 764, 110 S. Ct. 3092, 111 L. Ed. 2d 606 (1990) .....	189
<i>Lindh v. Murphy</i> , 521 U.S. 320, 117 S. Ct. 2059, 138 L. Ed. 2d 481 (1997) .....	30
<i>Liteky v. United States</i> , 510 U.S. 540, 114 S. Ct. 1147, 127 L. Ed. 2d 474 (1994) .....	passim
<i>Lockett v. Ohio</i> , 438 U.S. 586, 98 S. Ct. 2954, 57 L. Ed. 2d 973 (1978) .....	passim
<i>Magill v. Dugger</i> , 824 F.2d 879 (11th Cir. 1987) .....	372
<i>Mahler v. Kaylo</i> , 537 F.3d 494 (5th Cir. 2008) .....	passim

## TABLE OF AUTHORITIES

FEDERAL CASES (CONT'D)	PAGE(S)
<i>Marshall v. Jerrico, Inc.</i> , 446 U.S. 238, 100 S. Ct. 1610, 64 L. Ed. 2d 182 (1980) .....	69
<i>Martinez v. Wainwright</i> , 621 F.2d 184 (5th Cir. 1980) .....	58, 59
<i>Massiah v. United States</i> , 377 U.S. 201, 84 S. Ct. 1199, 12 L. Ed. 2d 246 (1964) .....	57
<i>Mata v. Johnson</i> , 99 F.3d 1261 (5th Cir. 1996) .....	305
<i>Mattox v. United States</i> , 146 U.S. 140, 13 S. Ct. 50, 37 L. Ed. 917 (1892) .....	215
<i>McDonald v. Pless</i> , 238 U.S. 264, 35 S. Ct. 783, 59 L. Ed. 1300 (1915) .....	282
<i>McKoy v. North Carolina</i> , 494 U.S. 433, 110 S. Ct. 1227, 108 L. Ed. 2d 369 (1990) .....	255, 258
<i>Mercadel v. Cain</i> , 179 F.3d 271 (5th Cir. 1999) .....	32
<i>Michigan v. Long</i> , 463 U.S. 1032, 103 S. Ct. 3469, 77 L. Ed. 2d 1201 (1983) .....	263, 264
<i>Miller-El v. Cockrell (Miller-El I)</i> , 537 U.S. 322, 123 S. Ct. 1029, 154 L. Ed. 2d 931 (2003) .....	31
<i>Miller-El v. Dretke (Miller-El II)</i> , 545 U.S. 231, 125 S. Ct. 2317, 162 L. Ed. 2d 196 (2005) .....	31
<i>Mills v. Maryland</i> , 486 U.S. 367, 108 S. Ct. 1860, 100 L. Ed. 2d 384 (1988) .....	255, 258
<i>Missouri ex rel. Southern R. Co. v. Mayfield</i> , 340 U.S. 1, 71 S. Ct. 1, 95 L. Ed. 3 (1950) .....	264
<i>Montana v. Egelhoff</i> , 518 U.S. 37, 116 S. Ct. 2013, 135 L. Ed. 2d 361 (1996) .....	371
<i>Mooney v. Holohan</i> , 294 U.S. 103, 55 S. Ct. 340, 79 L. Ed. 791 (1935) .....	40, 41
<i>Moore v. Johnson</i> , 194 F.3d 586 (5th Cir. 1999) .....	132

## TABLE OF AUTHORITIES

FEDERAL CASES (CONT'D)	PAGE(S)
<i>Moreno v. Dretke</i> , 450 F.3d 158 (5th Cir. 2006) .....	132
<i>Morgan v. Illinois</i> , 504 U.S. 719, 12 S. Ct. 2222, 119 L. Ed. 2d 492 (1992) .....	186
<i>Morrissey v. Brewer</i> , 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972) .....	227
<i>In re Murchison</i> , 349 U.S. 133, 75 S. Ct. 623, 99 L. Ed. 942 (1955) .....	68, 69, 72
<i>Murray v. Carrier</i> , 477 U.S. 478, 106 S. Ct. 2639, 91 L. Ed. 2d 397 (1986) .....	300
<i>Napue v. Illinois</i> , 360 U.S. 264, 79 S. Ct. 1173, 3 L. Ed. 2d 1217 (1959) .....	passim
<i>Neal v. Puckett</i> , 286 F.3d 230 (5th Cir. 2002) .....	165, 297, 360
<i>North Carolina v. Pearce</i> , 395 U.S. 711, 89 S. Ct. 2072, 23 L. Ed. 2d 656 (1969) .....	195
<i>In Re Oliver</i> , 333 U.S. 257, 68 S. Ct. 499, 92 L. Ed. 2d 682 (1948) .....	213, 216
<i>Oliver v. Scott</i> , 276 F.3d 736 (5th Cir. 2002) .....	143
<i>Panetti v. Quarterman</i> , 127 S. Ct. 2842, 168 L. Ed. 2d 662 (2007) .....	31, 109, 110, 177
<i>Parker v. Dugger</i> , 498 U.S. 308, 111 S. Ct. 731, 112 L. Ed. 2d 812 (1991) .....	125, 235, 237
<i>Pennsylvania v. Ashe</i> , 302 U.S. 51, 58 S. Ct. 59, 82 L. Ed. 43 (1937) .....	244
<i>Penry v. Johnson</i> , 532 U.S. 782, 121 S. Ct. 1910, 150 L. Ed. 2d 9 (2001) .....	passim
<i>Penry v. Lynaugh</i> , 492 U.S. 302, 109 S. Ct. 2934, 106 L. Ed. 2d 256 (1989) .....	passim
<i>Pointer v. Texas</i> , 380 U.S. 400, 85 S. Ct. 1065, 13 L. Ed. 2d 923 (1965) .....	273

## TABLE OF AUTHORITIES

FEDERAL CASES (CONT'D)	PAGE(S)
<i>Proffitt v. Florida</i> , 428 U.S. 242, 96 S. Ct. 2960, 49 L. Ed. 2d 913 (1976) .....	107
<i>Pyles v. Johnson</i> , 136 F.3d 986 (5th Cir. 1998) .....	41
<i>Reed v. Quarterman</i> , 504 F.3d 465 (5th Cir. 2007) .....	41
<i>Reis v. Quarterman</i> , 522 F.3d 522 (5th Cir. 2008) .....	130, 302, 303, 369
<i>Remmer v. United States</i> , 347 U.S. 227, 74 S. Ct. 450, 98 L. Ed. 654 (1954) .....	213, 215
<i>Rhines v. Weber</i> , 544 U.S. 269, 125 S. Ct. 1528, 161 L. Ed. 2d 440 (2005) .....	32
<i>Richardson v. Quarterman</i> , 537 F.3d 466 (5th Cir. 2008) .....	4, 68, 69, 342
<i>Riddle v. Cockrell</i> , 288 F.3d 713 (5th Cir. 2002) .....	345
<i>Ries v. Quarterman</i> , 522 F.3d 517 (5th Cir. 2008) .....	5, 30, 302, 303
<i>Ring v. Arizona</i> , 536 U.S. 584, 122 S. Ct. 2428, 153 L. Ed. 2d 556 (2002) .....	207, 248, 249
<i>Rompilla v. Beard</i> , 545 U.S. 374, 125 S. Ct. 2456, 162 L. Ed. 2d 360 (2005) .....	130, 131, 132
<i>Roper v. Simmons</i> , 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005) ....	217, 218, 219, 222
<i>Rosales v. Cockrell</i> , 220 F. Supp. 2d 593 (N. D. Tex. 2001) .....	351
<i>Ruiz v. Quarterman</i> , 504 F.3d 523 (5th Cir. 2007) .....	passim
<i>Salazar v. Dretke</i> , 419 F.3d 384 (5th Cir. 2003) .....	32
<i>Sandstrom v. Montana</i> , 442 U.S. 510, 99 S. Ct. 2450, 61 L. Ed. 2d 39 (1979) .....	205

## TABLE OF AUTHORITIES

FEDERAL CASES (CONT'D)	PAGE(S)
<i>Santosky v. Kramer</i> , 455 U.S. 745, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982) .....	229
<i>Sawyer v. Whitley</i> , 505 U.S. 333, 112 S. Ct. 2514, 120 L. Ed. 2d 269 (1992) .....	373
<i>Scheanette v. Quarterman</i> , 482 F.3d 815 (5th Cir. 2007) .....	351
<i>Schlup v. Delo</i> , 513 U.S. 289, 115 S. Ct. 851, 130 L. Ed. 2d 808 (1995) .....	373
<i>Sheppard v. Maxwell</i> , 384 U.S. 333, 86 S. Ct. 1507, 16 L. Ed. 2d 600 (1966) .....	283
<i>Shillinger v. Haworth</i> , 70 F.3d 1132 (10th Cir. 1995) .....	350
<i>Skipper v. South Carolina</i> , 476 U.S. 1, 106 S. Ct. 1669, 90 L. Ed. 2d 1 (1986) .....	124, 256
<i>Smith v. Dretke</i> , 422 F.3d 269 (5th Cir. 2005) .....	130, 132
<i>Smith v. Maryland</i> , 442 U.S. 735, 99 S. Ct. 2577, 61 L. Ed. 2d 220 (1979) .....	139
<i>Smith v. Phillips</i> , 455 U.S. 209, 102 S. Ct. 940, 71 L. Ed. 2d 78 (1982) .....	215, 260, 345
<i>Smith v. Texas</i> , 543 U.S. 37, 125 S. Ct. 400, 160 L. Ed. 2d 303 (2004) .....	112, 260
<i>Smith v. Texas</i> , 550 U.S. 297, 127 S. Ct. 1686, 167 L. Ed. 2d 632 (2007) .....	263
<i>Smith v. Zant</i> , 855 F.2d 712 (11th Cir. 1998) .....	371
<i>Soffar v. Dretke</i> , 368 F.3d 441 (5th Cir. 2004) .....	130
<i>Sonnier v. Quarterman</i> , 476 F.3d 349 (5th Cir. 2007) .....	131, 132, 360, 361
<i>Spaziano v. Florida</i> , 468 U.S. 447, 104 S. Ct. 3154, 82 L. Ed. 2d 340 (1984) .....	71

## TABLE OF AUTHORITIES

FEDERAL CASES (CONT'D)	PAGE(S)
<i>Stanford v. Kentucky</i> , 492 U.S. 361, 109 S. Ct. 2969, 106 L. Ed. 2d 306 (1989) .....	219
<i>Strickland v. Washington</i> , 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 2674 (1984) .....	passim
<i>Strickler v. Greene</i> , 527 U.S. 263, 119 S. Ct. 1936, 144 L. Ed. 2d 286 (1999) .....	passim
<i>Sullivan v. Louisiana</i> , 508 U.S. 275, 113 S. Ct. 2078, 124 L. Ed. 2d 182 (1993) .....	248
<i>Sumner v. Shuman</i> , 483 U.S. 66, 107 S. Ct. 2716, 97 L. Ed. 2d 56 (1987) .....	228
<i>Tanner v. United States</i> , 483 U.S. 107, 107 S. Ct. 2739, 97 L. Ed. 2d 90 (1987) .....	281
<i>Tassin v. Cain</i> , 517 F.3d 770 (5th Cir. 2008) .....	40, 46
<i>Taylor v. Hayes</i> , 418 U.S. 488, 94 S. Ct. 2697, 41 L. Ed. 2d 897 (1974) .....	68, 69, 70, 342
<i>Taylor v. Kentucky</i> , 436 U.S. 478, 98 S. Ct. 1930, 56 L. Ed. 2d 468 (1978) .....	371, 372
<i>Tennard v. Dretke</i> , 542 U.S. 274, 124 S. Ct. 2562, 159 L. Ed. 2d 384 (2004) .....	111, 112, 123, 260
<i>Thomas v. Calderon</i> , 151 F.3d 918 (9th Cir. 1998) .....	373
<i>Thompson v. Oklahoma</i> , 487 U.S. 815, 108 S. Ct. 2687, 101 L. Ed. 2d 702 (1988) .....	230
<i>Thornhill v. Alabama</i> , 310 U.S. 88, 60 S. Ct. 736, 84 L. Ed. 2d 1093 (1940) .....	251
<i>Tison v. Arizona</i> , 481 U.S. 137, 107 S. Ct. 1676, 95 L. Ed. 2d 127 (1987) .....	256
<i>Titsworth v. Dretke</i> , 401 F.3d 301 (5th Cir. 2005) .....	59
<i>Towns v. Smith</i> , 395 F.3d 251 (6th Cir. 2005) .....	40

## TABLE OF AUTHORITIES

FEDERAL CASES (CONT'D)	PAGE(S)
<i>Tuilaepa v California</i> , 512 U.S. 967, 114 S. Ct. 2630, 129 L. Ed. 2d 750 (1994) .....	234, 235
<i>Tumey v. Ohio</i> , 273 U.S. 510, 47 S. Ct. 437, 71 L. Ed. 749 (1927) .....	68, 69, 70, 342
<i>Turner v. Louisiana</i> , 379 U.S. 466, 85 S. Ct. 546, 13 L. Ed. 2d 424 (1965) .....	214, 215
<i>In re United States</i> , 345 F.3d 450 (7th Cir. 2003) .....	72
<i>United States v. Allen</i> , 247 F.3d 741 (8th Cir. 2001) .....	249, 250
<i>United States v. Antone</i> , 603 F.2d 566 (5th Cir. 1979) .....	59
<i>United States v. Armstrong</i> , 517 U.S. 456, 116 S. Ct. 1480, 134 L. Ed. 2d 687 (1996) .....	344
<i>United States v. Auten</i> , 632 F.2d 478 (5th Cir. 1980) .....	58, 59
<i>United States v. Bagley</i> , 473 U.S. 667, 105 S. Ct. 3375, 87 L. Ed. 2d 481 (1985) .....	40, 46, 60, 61
<i>United States v. Barnham</i> , 595 F.2d 231 (5th Cir. 1979) .....	41, 48
<i>United States v. Batchelder</i> , 442 U.S. 114, 99 S. Ct. 2198, 60 L. Ed. 2d 755 (1979) .....	344
<i>United States v. Bencs</i> , 28 F.3d 555 (6th Cir. 1994) .....	40
<i>United States v. Betner</i> , 489 F.2d 116 (5th Cir. 1974) .....	213
<i>United States v. Burke</i> , 496 F.2d 373 (5th Cir. 1974) .....	345
<i>United States v. Chiantese</i> , 560 F.2d 1244 (5th Cir. 1977) .....	205
<i>United States v. Denman</i> , 100 F.3d 399 (5th Cir. 1996) .....	213

## TABLE OF AUTHORITIES

<b>FEDERAL CASES (CONT'D)</b>	<b>PAGE(S)</b>
<i>United States v. Deutsch</i> , 475 F.2d 55 (5th Cir. 1973) .....	58
<i>United States v. Dioguardi</i> , 492 F.2d 70 (2nd Cir. 1974) .....	281
<i>United States v. Dionisio</i> , 410 U.S. 19, 93 S. Ct. 777, 35 L. Ed. 2d 67 (1973) .....	250
<i>United States v. DuBo</i> , 186 F.3d 1177 (9th Cir. 1999) .....	250
<i>United States v. Forrest</i> , 620 F.2d 446 (5th Cir. 1980) .....	280
<i>United States v. Frady</i> , 456 U.S. 152, 102 S. Ct. 1584, 71 L. Ed. 2d 816 (1982) .....	301
<i>United States v. Gaytan</i> , 74 F.3d 545 (5th Cir. 1996) .....	250
<i>United States v. Hall</i> , 455 F.3d 508 (5th Cir. 2006) .....	351
<i>United States v. Hernandez</i> , 109 F.3d 1450 (9th Cir. 1997) .....	69
<i>United States v. Jacobsen</i> , 466 U.S. 109, 104 S. Ct. 1652, 80 L. Ed. 2d 85 (1984) .....	130, 144
<i>United States v. Kelly</i> , 790 F.2d 130 (D.C. Cir. 1980) .....	350
<i>United States v. Levy</i> , 577 F.2d 200 (3rd Cir. 1978) .....	350
<i>United States v. Miller</i> , 425 U.S. 435, 96 S. Ct. 1619, 48 L. Ed. 2d 71 (1976) .....	142
<i>United States v. Miller</i> , 520 F.3d 504 (5th Cir. 2008) .....	42
<i>United States v. Perdomo</i> , 929 F.2d 967 (3d Cir. 1991) .....	58
<i>United States v. Posado</i> , 57 F.3d 428 (5th Cir. 1995) .....	181



## TABLE OF AUTHORITIES

FEDERAL CASES (CONT'D)	PAGE(S)
<i>United States v. Webster</i> , 392 F.3d 787 (5th Cir. 2004) .....	58, 351
<i>Uttecht v. Brown</i> , 127 S. Ct. 2218, 167 L. Ed. 2d 1014 (2007) .....	113, 114, 185
<i>Valdez v. Johnson</i> , 93 F. Supp. 2d 769 (S.D. Tex. 1999) .....	132
<i>Vasquez-Ramirez v. United States District Court (In re Vasquez-Ramirez)</i> , 443 F.3d 692 (9th Cir. 2006) .....	72
<i>Wainwright v. Sykes</i> , 433 U.S. 72, 97 S. Ct. 2497, 53 L. Ed. 2d 594 (1977) .....	300, 301
<i>Wainwright v. Witt</i> , 469 U.S. 412, 105 S. Ct. 844, 83 L. Ed. 2d 841 (1985) .....	185, 186
<i>Watts v. Quarterman</i> , 448 F. Supp. 2d 786 (W.D. Tex. 2006) .....	351
<i>Webb v. Texas</i> , 409 U.S. 95, 93 S. Ct. 351, 34 L. Ed. 2d 330 (1972) .....	273
<i>Wiggins v. Smith</i> , 539 U.S. 510, 123 S. Ct. 2527, 156 L. Ed. 2d 471(2003) .....	passim
<i>Wilkerson v. Cain</i> , 233 F.3d 886 (5th Cir. 2000) .....	44, 46
<i>Williams v. Taylor</i> , 529 U.S. 362, 120 S. Ct. 1495, 146 L. Ed. 2d 389 (2000) ..	31, 165, 296, 350
<i>Williams v. Whitley</i> , 940 F.2d 132 (5th Cir. 1991) .....	58
<i>In re Winship</i> , 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970) ....	168, 204, 228, 229
<i>Witherspoon v. Illinois</i> , 391 U.S. 510, 88 S. Ct. 1770, 20 L. Ed. 2d 776 (1968) .....	185, 186
<i>Withrow v. Larkin</i> , 421 U.S. 35, 95 S. Ct. 1456, 43 L. Ed. 2d 712 (1975) .....	68, 342
<i>Wood v. Quarterman</i> , 503 F.3d 408 (5th Cir. 2007) .....	171

## TABLE OF AUTHORITIES

FEDERAL CASES (CONT'D)	PAGE(S)
<i>Woodson v. North Carolina</i> , 428 U.S. 280, 96 S. Ct. 2978, 49 L. Ed. 2d 944 (1976) .....	passim
<i>Younger v. Harris</i> , 401 U.S. 37, 91 S. Ct. 746, 27 L. Ed. 2d 669 (1971) .....	194
<i>Zant v. Stephens</i> , 462 U.S. 862, 103 S. Ct. 2733, 77 L. Ed. 2d 235 (1983) .....	188, 230, 372
STATE CASES	
<i>Ex Parte Adams</i> , 768 S.W.2d 281 (Tex. Crim. App. 1989) .....	47
<i>Burkhalter v. State</i> , 493 S.W.2d 214 (Tex. Crim. App. 1973) .....	46
<i>Burns v. State</i> , 761 S.W.2d 353 (Tex. Crim. App. 1988) .....	113
<i>Callins v. State</i> , 780 S.W.2d 176 (Tex. Crim. App. 1989) .....	249
<i>Ex parte Campbell</i> , 226 S.W.3d 418 (Tex. Crim. App. 2007) .....	269
<i>Canales v. State</i> , 98 S.W.3d 690 (Tex. Crim. App. 2003) .....	60, 63
<i>Cantu v. State</i> , 939 S.W.2d 627 (Tex. Crim. App. 1996) .....	110, 111
<i>Ex Parte Carpenter</i> , 2007 WL 678622 (Tex. Crim. App. 2007) .....	313
<i>Clark v. State</i> , 881 S.W.2d 682 (Tex. Crim. App. 1994) .....	254
<i>Clinton Lee Young v. State</i> , 2005 WL 2374669 (Tex. Crim. App. 2005) .....	passim
<i>Coble v. State</i> , 871 S.W.2d 192 (Tex. Crim. App. 1993) .....	171, 172
<i>Commonwealth v. Mosby</i> , 11 Mass. App. 1 (App. Suffolk 1980) .....	284, 287, 288

## TABLE OF AUTHORITIES

STATE CASES (CONT'D)	PAGE(S)
<i>Corwin v. State</i> , 870 S.W.2d 23 (Tex. Crim. App. 1993) .....	171, 173, 174
<i>In re Dolezal</i> , 970 S.W.2d 650 (Tex. Crim. App. 1998) .....	146
<i>Draughon v. State</i> , 831 S.W.2d 331 (Tex. Crim. App. 1991) .....	254
<i>Duggan v. State</i> , 778 S.W.2d 465 (Tex. Crim. App. 1989) .....	46
<i>Eldridge v. State</i> , 940 S.W.2d 646 (Tex. Crim. App. 1996) .....	229
<i>Feldman v. State</i> , 71 S.W.3d 738 (Tex. Crim. App. 2002) .....	172
<i>Fisher v. State</i> , 736 P.2d 1003 (Okla. Crim. App. 1987) .....	237
<i>Franklin v. State</i> , 138 S.W.3d 351 (Tex. Crim. App. 2004) .....	280
<i>Gardner v. State</i> , 730 S.W.2d 675 (Tex. Crim. App. 1987) .....	179
<i>Glover v. State</i> , 110 S.W.3d 549 (App. 10 Dist. 2003) .....	226
<i>Ex parte Graves</i> , 70 S.W.3d 103 (Tex. Crim. App. 2002) .....	passim
<i>Green v. State</i> , 566 S.W.2d 578 (Tex. Crim. App. 1978) .....	139
<i>Green v. State</i> , 840 S.W.2d 394 (Tex. Crim. App. 1992) .....	213
<i>Hooper v. State</i> , 214 S.W.2d 9 (Tex. Crim. App. 2007) .....	168, 176, 241, 242
<i>Ex parte Mines</i> , 26 S.W.3d 910 (Tex. Crim. App. 2000) .....	304, 306

## TABLE OF AUTHORITIES

STATE CASES (CONT'D)	PAGE(S)
<i>Jackson v. State</i> , 17 S.W.3d 664 (Tex. Crim. App. 2000) .....	168, 173
<i>Ex parte Kerr</i> , 64 S.W.3d 414 (Tex. Crim. App. 2002) .....	340
<i>Livingston v. State</i> , 739 S.W.2d 311 (Tex. Crim. App. 1987) .....	185
<i>Lowery v. State</i> , 547 N.E.2d 1046 (Ind. 1989) .....	237
<i>McFarland v. State</i> , 928 S.W.2d 482 (Tex. Crim. App. 1996) .....	235
<i>McGinn v. State</i> , 961 S.W.2d 161 (Tex. Crim. App. 1998) .....	234
<i>Moore v. State</i> , 969 S.W.2d 4 (Tex. Crim. App. 1998) .....	249
<i>Nethery v. State</i> , 692 S.W.2d 686 (Tex. Crim. App. 1985) .....	181
<i>Richardson v. State</i> , 865 S.W.2d 944 (Tex. Crim. App. 1993) .....	139, 141
<i>Rios v. State</i> , 846 S.W.2d 310 (Tex. Crim. App. 1992) .....	171, 173
<i>Roberts v. State</i> , 220 S.W.3d 521 (Tex. Crim. App. 2007) .....	351
<i>Rodriguez v. State</i> , 2006 WL 827833 (Tex. Crim. App. 2006) .....	313
<i>Ross v. State</i> , 133 S.W.3d 618 (Tex. Crim. App. 2004) .....	318
<i>Sanders v. State</i> , 1 S.W.3d 885 (App. 3 Dist. 1999) .....	226
<i>Sattiewhite v. State</i> , 786 S.W.2d 271 (Tex. Crim. App. 1989) .....	254
<i>Sells v. State</i> , 121 S.W.2d 748 (Tex. Crim. App. 2003) .....	168

## TABLE OF AUTHORITIES

STATE CASES (CONT'D)	PAGE(S)
<i>Sheridan v. State</i> , 852 S.W.2d 772 (Ark. 1993) .....	237
<i>Sorto v. State</i> , 173 S.W.3d 469 (Tex. Crim. App. 2005) .....	316
<i>State v. Breton</i> , 663 A.2d 1026 (Conn. 1995) .....	237
<i>State v. Comeaux</i> , 818 S.W.2d 46 (Tex. Crim. App. 1991) .....	139, 140, 141
<i>State v. Hardy</i> , 963 S.W.2d 516 (Tex. Crim. App. 1997) .....	passim
<i>State v. Hernandez</i> , 562 N.E.2d 219 (Ill. App. 2 Dist. 1990) .....	237
<i>State v. Moore</i> , 927 P.2d 1073 (Ore. Sup. Ct. 1996) .....	237
<i>State v. Richardson</i> , 463 S.E.2d 492 (N.C. 1995) .....	237
<i>State v Schieneman</i> , 77 S.W.3d 810 (Tex. Crim. App. 2002) .....	142
<i>Studer v. State</i> , 799 S.W.2d 263 (Tex. Crim. App. 1990) .....	249
<i>Thomas v. State</i> , 519 S.W.2d 430 (Tex. Crim. App. 1975) .....	284, 289
<i>Thomas v. State</i> , 699 S.W.2d 845 (Tex. Crim. App. 1985) .....	213
<i>Vuoung v. State</i> , 830 S.W.2d 929 (Tex. Crim. App. 1992) .....	171, 172
<i>Walker v. State</i> , 615 S.W.2d 728 (Tex. Crim. App. 1981) .....	201
<b>FEDERAL STATUTES, RULES AND CONSTITUTION</b>	
U.S. Const. amend. VI .....	273
18 U.S.C. § 3591 .....	249

## TABLE OF AUTHORITIES

### FEDERAL STATUTES, RULES AND CONSTITUTION PAGE(S)

28 U.S.C. § 2254 ..... passim

### STATE STATUTES, RULES AND CONSTITUTION

Mont. Code Ann. § 45-5-303 ..... 191

Tex. Code Crim. Pro. § 37.071 ..... *passim*

Tex. Code Crim. Pro. Art. 11.071 ..... *passim*

Tex. Code Crim. Proc. § 38.1 ..... passim

Tex. Code Crim. Proc. §35.22 ..... 226

Texas Code of Judicial Conduct, Canon 3.B ..... 70

Tex. Const. Art. I § 20 ..... 250

Tex. Const. Art. V § 12 (b) ..... 249, 250

Tex. Fam. Code, § 58.007 ..... 147

Tex. Hum. Res. § 61.095 ..... 148

Tex. Occ. Code, § 159.002 ..... 145, 146

Tex. Pen. Code § 7.01, 7.02, 6.03, 19.02 ..... *passim*

Tex. R. of Civ. Proc. 18(b) ..... 70

Tex. Rule of Evid. 801 ..... 150

Tex. Rule of Evid. Rule 802 ..... 150

Tex. Rule of Evid. Rule 803(6) ..... 150, 151

Tex. Rule of Evid. Rules 401 ..... 151

### MISCELLANEOUS

A.P. Merillat, *The Question of Future Dangerousness of Capital Defendants*,  
 Tex. B.J. 738, 738 (2006) ..... 62